

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, the 15th day of September, two thousand six.

PRESENT:

HON. ROBERT D. SACK,
HON. ROBERT A. KATZMANN,
HON. REENA RAGGI,
Circuit Judges.

Eun Chen Liu, also known as Run Quan Liu,
_____*Petitioner,*

-v.-

No. 06-1636-ag
NAC

Board of Immigration Appeals,
Respondent.

FOR PETITIONER: Gary J. Yerman, New York, New York.

FOR RESPONDENT: Glenn T. Suddaby, United States Attorney for the Northern District of New York, Paul D. Silver, William C. Pericak, Assistant United States Attorneys, Albany, New York.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Petitioner Eun Chen Liu, a.k.a., Run Quan Liu, a citizen of the People’s Republic of
2 China, seeks review of a March 20, 2006 order of the BIA affirming the October 12, 2004
3 decision of Immigration Judge (“IJ”) Gabriel C. Videla denying his applications for asylum,
4 withholding of removal and relief under Article 3 of the Convention Against Torture (“CAT”).
5 *In re Eun Chen Liu*, No. A71 488 718 (B.I.A. Mar. 20, 2006), *aff’g* No. A71 488 718 (Immig. Ct.
6 N.Y. City Oct. 12, 2004). We assume the parties’ familiarity with the underlying facts and
7 procedural history of the case.

8 Where, as here, the BIA affirms the IJ’s decision without opinion, this Court reviews the
9 IJ’s decision directly. *See Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). This Court reviews the
10 agency’s factual findings, including adverse credibility determinations, under the substantial
11 evidence standard, treating them as “conclusive unless any reasonable adjudicator would be
12 compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v.*
13 *INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). However, we will vacate and remand for new
14 findings if the agency’s reasoning or its fact-finding process was sufficiently flawed. *Cao He Lin*
15 *v. U.S. Dep’t of Justice*, 428 F.3d 391, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121,
16 129 (2d Cir. 2004); *see also Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 158-60 (2d Cir.
17 2006) (agreeing with this principle, but avoiding remand, in spite of deficiencies in an adverse
18 credibility determination, because it could be confidently predicted that the IJ would adhere to
19 the decision were the case remanded).

20 Here, substantial evidence supports the IJ’s finding that it was implausible that Liu and
21 his wife would register their marriage and combine their household registrations with the
22 government before they fled their village or while they were in hiding. The IJ noted that Liu’s
23 alleged fear of sterilization was contradicted by the relative ease with which he obtained legal
24 documents and a changed his household register, and reasonably rejected Liu’s explanation that

1 he was able to obtain a marriage certificate because the office that issues them is not connected to
2 the family planning office. Such disconnectedness would tend to support the IJ's conclusion that
3 Liu "was able to function in China and have repeated government contacts to obtain documents
4 and not face any consequences with respect to the birth control policy."

5 Substantial evidence also supports the IJ's finding that the forged death certificate of
6 Liu's mother fatally damaged his credibility. Although Liu testified that he told the person who
7 filled out his paperwork that he wanted to return to China in order to visit his wife in the hospital,
8 the IJ reasonably rejected this explanation, finding that Liu's purported ignorance was
9 implausible. The IJ explained that because Liu had a valid and compelling reason to return to
10 China, there was no need for the agency he hired to fabricate a document or fraudulently submit
11 an application on his behalf. The IJ also considered and reasonably rejected Liu's explanation
12 that the agency lied because it enabled them to collect money from him, where stating the truth
13 would also presumably have entitled them to a fee.

14 In addition, even if Liu was excusably ignorant of the lies propagated by the immigration
15 agency he used, substantial evidence supports the IJ's finding that his application for advanced
16 parole undermined his alleged fear of persecution. Although Liu stated that he would have had
17 second thoughts about going to China had his parole been granted, the very act of applying for
18 permission to return to China provides sufficient evidence that a reasonably adjudicator would
19 not be compelled to overturn the IJ's finding that Liu did not possess a genuine subjective fear of
20 persecution.

21 Accordingly, despite any IJ errors, substantial evidence supports the adverse credibility
22 determination and the finding that Liu's application for advanced parole undermined his
23 subjective fear of persecution. *See Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 162 (2d
24 Cir. 2006). In addition, because he failed to meet the burden of proof for asylum, the IJ correctly

1 found that he also failed to establish eligibility for withholding of removal. *See Wu Biao Chen v.*
2 *INS*, 344 F.3d 272, 275 (2d Cir. 2003). Finally, we do not address the IJ's conclusion that
3 involuntary sterilization, imprisonment and fines do not constitute torture under the CAT because
4 the adverse credibility determination in this case necessarily precludes success on the claim for
5 CAT relief. *See Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 523 (2d Cir. 2005); *Cf.*
6 *Shu Ling Ni v. BIA*, 439 F.3d 177, 179-80 (2d Cir. 2006).

7 For the foregoing reasons the petition for review is DENIED. Having completed our
8 review, any stay of removal that the Court previously granted in this petition is VACATED, and
9 any pending motion for a stay of removal in this petition is DENIED. Any pending request for
10 oral arguments in this case is DENIED in accordance with Federal Rule of Appellate Procedure
11 34(a)(2), Second Circuit Local Rule 34(d)(1).

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15 FOR THE COURT:
16 Roseann B. MacKechnie, Clerk

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18 By: _____
19 Oliva M. George, Deputy Clerk